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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,012	09/21/2001	James R. Mault	MJA-22202/03	4212

7590 08/21/2003

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EXAMINER

GIBSON, RANDY W

ART UNIT	PAPER NUMBER
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2841

DATE MAILED: 08/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/960,012	MAULT, JAMES R.
Examiner	Art Unit	
Randy W. Gibson	2841	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____ .
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-12 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 21 September 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on ____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____ .
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed February 15, 2002 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. For whatever reason, there were no copies of the references listed on the IDS which accompanied the file wrapper. The IDS has been placed in the application file, but only the references which were readily available to the examiner from other sources have been considered.

2. The information disclosure statement filed February 15, 2002 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language.

3. The information disclosure statement filed February 15, 2002 fails to comply with 37 CFR 1.98(b)(1) because it does not include a publishing date for each reference cited.

4. The examiner notes that the eighteen (18) page IDS filed on February 15, 2002 contains a large number of references, most of which seem to bear no relation to the

claimed invention, without any attempt on the part of the applicant to explain why, or what part of, the references are considered to be relevant. The examiner notes that at least some circuit courts have held that an applicant's duty of disclosure of material and information is not satisfied by presenting a patent examiner with "...a mountain of largely irrelevant [material] from which he is *presumed* to have been able, with his expertise and with adequate time, to have found the critical [material]. It ignores the real world conditions under which examiners work." *Rohm & Haas Co. v. Crystal Chemical Co.*, 722 F.2d 1556, 1573 [220 USPQ 289] (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). (Emphasis in original). Patent applicant has a duty not just to disclose pertinent prior art references but to make a disclosure in such way as not to "bury" it within other disclosures of less relevant prior art; See *Golden Valley Microwave Foods Inc. v. Weaver Popcorn Co. Inc.*, 24 USPQ2d 1801 (N.D. Ind. 1992); *Molins PLC v. Textron Inc.*, 26 USPQ2d 1889, at 1899 (D.Del. 1992); *Penn Yan Boats, Inc. v. Sea Lark Boats, Inc. et al.*, 175 USPQ 260, at 272 (S.D. Fl. 1972).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mault (US # 6,478,736 B1) in view of Hettinger (U.S. 5,033,561) and Knab et al (GB # 2,269,021). Mault discloses a PDA device with a food database contained therein that is programmed to determine the nutritional content of a food item selected by a user based on the food item's identity and weight (Col. 7, lines 25-58). The PDA device is disclosed to be able to communicate with remote devices, including a weighing scale (72), either by a direct physical connection or by known wireless means (Col. 9, line 66 to col. 10, line 68). Mault does not disclose that the scale is used to weigh food about to be consumed; it appears that the weight of the food is input via keyboard or touch screen by the user after it is weighed on a separate device. However, it is known to weigh food using an electronic scale and to electronically combine digital weight information received directly from the scale with nutritional data taken from a digital food database as shown by the examples of Hettinger (Col. 2, lines 39-42 & 57-68; Col. 3, lines 1-12) and Knab et al (p. 5, lines 1-22). Since the PDA of Mault is already set up to receive digital weight data from an electronic weighing scale, it would have been obvious to modify the program to optionally receive weight data regarding food directly from the same scale, since this would reduce the chance of human error.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Perego (U.S. # 4,223,750), Bankier et al (U.S. # 5,044,453), the

two references to Ratcliff (U.S. # 4,244,020 & 4,575,804), and Mano (JP # 5,231,915 A) show weighing scales which also calculate nutritional information.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy W. Gibson whose telephone number is (703) 308-1765. The examiner can normally be reached on Mon-Fri., 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David S Martin can be reached on (703) 308-3121. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-5115.

August 14, 2003



Randy W. Gibson
Primary Examiner
Art Unit 2841